IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5597 of 2004

Between:

B.V. Pitchaiah, S/o. Late B. Suryanarayana, Hindu,
R/o. D.No.27-17-7, Peddibotlavari Street, Governorpet,

Vijayawada - 520 002.

..... PETITIONER

AND

1. Vijayawada Municipal Corporation, Rep. by its Commissioner,

   Vijayawada 520 001.
2. Mrs. Usha Rani, I.A.S., Commissioner,
   Municipal Corporation Vijayawada - 520 001.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one under Writ of Mandamus, declaring the action of the respondents in seizing the shop premises bearing Door No. 27-17-7, Peddibotlavari Street, Governorpet, Vijayawada as illegal and ultra vires to the provisions of Articles 14 and 19(1)(g) of Constitution of India and also to the mandatory provisions of Hyderabad Municipal Corporation Act and the rules framed thereunder on the subject from time to time, which is made applicable to the first respondent corporation besides directing the respondents to remove the seals put to the shop premises bearing No. 27-17-7, Peddibotlavari Street, Governorpet, Vijayawada Municipal Corporation and consequently direct the 2nd respondent to pay damages of Rs. 1,00,000-00.

For the Petitioner: Mr. V.S.R. Anjaneyulu, Advocate.

For the Respondents: Mr. T.S. Venkataramana, SC for Vijayawada Municipal Corporation.

The Court made the following:

ORDER: (per Sri B. Sudershan Reddy, J)

The short question that falls for our consideration in this writ petition is whether the respondent – Municipal Corporation in the process of recovery of the property tax under the provisions of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') is entitled to seize the shop and put the seal depriving the tenant in occupation of his right to carry on business in the premises in respect of which the property tax became due?

There is no dispute whatsoever raised by the petitioner that he is the tenant of the premises in question bearing D.No. 27-17-7, Peddibotlavari Street, Governorpet, Vijayawada. The owner of the premises failed to pay the property tax. There is also no dispute about the liability of the petitioner being the tenant to pay the rents. Therefore, the only question that falls for our consideration is whether the Corporation is authorized to close the shop and seal the same.

However, in the counter affidavit filed by the Corporation it is stated that the property in question was assessed with assessment

No. 20204 of 23rd ward and tax of the said assessment was enhanced to Rs.14,218/- from old tax of Rs.6,287.55, with effect from 01-04-2001. On the said enhancement, the owner of the property preferred C.M.A

No. 1155 of 2002 in which the Court is stated to have granted an interim direction subject to the condition of the owner of the premises depositing a sum of Rs.8,421/- for half year. That no amounts were paid by the petitioner in spite of such conditional order passed by the Court. It is under those circumstances, the respondents initiated coercive steps "and the premises was seized and seals was put in including the portion of the property occupied by the tenant on 18-03-2004. The action taken by the Respondent Corporation staff is in accordance to the provisions of the H.M.C Act for realization of the property tax dues".

We have required the learned Standing Counsel for the Municipal Corporation of Vijayawada to show us the relevant provision of the Act under which such a step could have been taken by the Corporation for realization of the property tax. The learned Standing Counsel relied on Sections 268 and 269 of the Act. Neither Section 268 nor Section 269 authorised the Corporation to seize the premises and put the seal as it has done in the instant case. In the circumstances, we have no option except to declare the action of the Corporation to be ultra vires. Therefore, there shall be a direction to the respondent – Corporation not to interfere with the petitioner's business by putting any seal on the premises in question. This order shall not preclude the respondent – Corporation to exercise its power under Section 269 of the Act and proceed further in accordance with law uninfluenced by the observations, if any, made in this order.

With the limited directions as above, the Writ Petition is disposed of without any order as to costs.

(B. Sudershan Reddy, J)

11-04-2005

(C.V. Ramulu, J)

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To

1. The Commissioner, Vijayawada Municipal Corporation,

   Vijayawada 520 001.

2 Mrs. Usha Rani, I.A.S., Commissioner,
Municipal Corporation Vijayawada - 520 001.

3 **2 CD copies.**

4 1 CC to MR.VENKATARAMANA